

Senate Bill 257, Senator Jones

1. ***SB 257 proposes to clarify*** and more clearly define the scope of authority of the ***Board of Public Education, which has "general supervision"*** over public education in Montana under Article X, Section 9 and ***elected school boards, which have "supervision and control"*** over public education in Montana under Article X, Section 8 of the Montana Constitution.
2. A key question that has come up over the years is ***"what is the difference between the authority of the Board of Public Education and the authority of local elected school boards?"*** SB 257 seeks to answer that question.
3. **Constitutional convention notes** indicate that the ***framers were seeking to strike a balance*** between these two powers and ***ensure that local control regarding the specifics of implementation and delivery of education remain in each community***. In short, the Board of Public Education is to set minimum standards and local school boards are to determine how to implement these standards and how to build upon what the Board of Public Education requires in providing a quality education to kids.
 - a. ***Framers changed a first draft of Article X, Section 9*** that gave the Board of Public Education "general supervision ***and control***" to remove the words "and control" to emphasize that they were trying to ensure that local control would be preserved. See Delegate Champoux' comments at Vol. VI, at 2046-2047.
 - b. ***Framers added "supervision and control" for elected school boards*** to ensure preservation of local autonomy and to give local school boards authority comparable to that of the Board of Regents over higher ed. See Delegate Heliker's comments at Vol. VI, at 2046.
4. State law currently specifies that the Board of Public Education has "general supervision" but it does not define what that power is. SB 257 improves this situation by proposing a definition that is consistent with the framers' intent as set forth in the constitutional convention notes and binding court decisions of the Montana Supreme Court in two Montana Supreme Court cases, and one district court case that the Legislature chose not to appeal.
 - a. **Helena Elementary Court Holding:**

"[Finding of Fact 270] In sum, the Montana School Accreditation Standards are minimum standards upon which quality education must be built."

"[Conclusion of Law 18] Thus, the Montana School Accreditation Standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the State of Montana for funding its public elementary and secondary schools."
 - b. **Columbia Falls Elementary Court Holding:**

We also note that in Helena Elementary we stated that "the accreditation standards establish a minimum upon which quality education can be built" but "do not fully define either the constitutional

rights of students or the constitutional responsibilities of the State of Montana for funding its public elementary and secondary schools."
Helena Elementary, 236 Mont. at 57, 769 P.2d at 692.

District Court Holding in Montana Board of Public Education v. State:

The Board of Public Education, pursuant to Article X, section 9(3), of the Montana Constitution, is vested with constitutional rule making authority. This provision is self-executing and independent of any power that is delegated to the Board by the Legislature. The Board's rule mandating gifted and talented programs is within the purview of the Board's constitutional power of general supervision pursuant to Article X, section 9(3), of the Montana Constitution. House

Bill No. 116, to the extent that it interferes or conflicts with the Board's constitutional rule making power, is in violation of the separation of powers doctrine of Article III, section 1, of the Montana Constitution, and is therefore invalid. Montana Board of Public Education v. State, Cause No. BDV-91-1072, 1st Judicial District (1992).

5. So What Does SB 257 Seek to Do?

- a. **It defines "general supervision"** when exercised by the Board of Public Education to consist of the authority clearly intended by the framers as evidenced by the constitutional convention notes, which has been clarified and made law through a series of court decisions over the years. ***The "general supervision" of the Board of Public Education at its core is authority to adopt and ensure compliance with the accreditation standards.*** SB 257 defines this authority consistent with con con notes, court cases and the Legislature's own definition of the Basic System of Free Quality Schools in 20-9-309, MCA.
- b. **It defines "supervision and control"** when exercised by elected school boards in a manner ***designed to ensure the preservation of local control as intended by the Constitutional Framers*** – as the locally-exercised power to determine how to provide a quality education to kids in our public schools while complying with the accreditation standards adopted by the Board of Public Education through exercise of its constitutional powers.
- c. **SB 257 pulls together what one would currently have to discern from reading con con notes, Montana Supreme Court decisions, a district court decision and other provisions of Montana law into one section of law** so that you don't have to have a law degree to figure out how "general supervision" and "supervision and control" interact.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Convention Notes:

New provision which guarantees control of schools to local boards. Deletes requirement in 1889 constitution that elections for school district officers must be separate from state and county elections.

Transcripts:

(Delegate Heliker proposes an amendment "The supervision and control of schools in each school district shall be vested in a school board.") Vol. VI, at 2046.

Delegate Heliker: Mr. Chairman, not being a member of the Education Committee, although I am vitally interested in the subjects considered by that committee for the same reason that all of us are, of course, plus the fact that I am myself a teacher, but not being a member of the committee, I have become aware of the problems that the committee has considered only as its report has approached the debate stage and as it has come on the floor and been debated. *And I became aware--that is, acutely aware, although I was generally aware before, I suppose, if I thought about it much--that there is grounds for concern of--concerning the autonomy of the local control*, the local school boards, as financing of the schools gravitates toward the state more and more and as we see in the future the increasing likelihood that it--there will be a continuation of that trend.

And the fear has been expressed here on--in this committee, when we were discussing these matters previously, that the local school boards would lose autonomy as they lost their control over the funds, if they do. *Now, this committee has not provided, I notice, for autonomy in the Constitution for local school boards*, although that autonomy is provided in the statutes which make the local school boards bodies corporate. *At the same time, however, the committee proposal in Section 11 provides for autonomy to a certain extent for the Board of Regents, which they propose to establish as a constitutional board. And I feel, therefore, that we should give constitutional recognition and status to the local boards to--first of all, to allay the fears which have been expressed, which I think are well founded, concerning the preservation of local autonomy; and secondly, to give parallel treatment to the governing boards of the public schools, as well as the public universities and colleges.* Thank you, Mr. Chairman. Vol. VI, at 2046.

Delegate Champoux: Mr. President, fellow delegates. I also have felt that there is quite a bit of fear on the part of many delegates here, and no matter what we say, perhaps they'd still have that fear that the local school districts are going to lose some control and some power. And if you'll note in my remarks to the--when we get to 9, 10 and 11, *you will note that we have even eliminated the word "control" in the new Public Board of Education, where it is in the old Constitution, and only use the word "supervise". By this amendment the intent is shown*, I think, that this delegate--*this body does want local control to remain with the local school districts*, and I heartily support it. Vol. VI, at 2046-2047.

(amendment adopted on voice vote)

Section 9. Boards of education. (3) (a) *There is a board of public education to exercise general supervision over the public school system* and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

Transcripts:

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The longest-serving member of the State Board of Education, Maury Richards--many of you know him--sent us a letter, and I quote: "Please give every consideration to a two board system. Frankly, even the most capable, dedicated board member finds it impossible to do justice to the total assignment." Numerous studies have shown that we need this. *The fear has been expressed that a separate board for public education might usurp the powers of local boards.* There is no reason to be concerned about such a policy possibility--however, since the powers granted the state board would be almost identical to those now granted, *and what we have just done is to guarantee the control by the local board at the local level. Indeed, the committee has actually deleted the word "control" from the powers and granted--now granted the board, so that the new section reads: "exercise general supervision over the public school system.*

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Delegate Champoux: And I'm going to be brief, sir. Very briefly, if you look at this section compared with the old section, *you'll find out that we've eliminated the word "control".* Now, we did this to alleviate any fears that the local boards might have. *This indicates, in our mind, that the local boards should stay in control of education at the local level.* And we've indicated this also by passing the section, last Friday, which gives them control over local education.